

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL M. NEELY,)	
vs.)	Civil Action No. 09-176
DEBRA K. HURST, I.R.S. "ACS Employee))	Judge Arthur J. Schwab
Identification #! 11-00BUFF"; R.A.)	Chief Magistrate Judge Amy Reynolds Hay
MITCHELL, I.R.S. "Director, Campus)	
Compliance Operations"; NANCY)	
WERME, Prothonotary, Beaver County)	
Pennsylvania,)	
Defendants)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the case be dismissed with prejudice as against Debra K. Hurst and R.A. Mitchell and remanded to state court for all further proceedings against Nancy Werme.

II. Report

Michael M. Neely ("Plaintiff") initially filed suit against Debra K. Hurst, R.A. Mitchell and Nancy Werme in the Court of Common Pleas of Beaver County. The essence of Plaintiff's claim is that notices of federal tax liens that were filed against him in Beaver County for unpaid taxes were technically deficient under Pennsylvania law. Complaint ¶ 12. Plaintiff named Hurst and Mitchell as defendants since their names appeared on the notices of federal tax liens. Id. ¶ 28. He asserted that their filing of the notices was "under color of their official capacity ..." Id. ¶ 27.

Hurst and Mitchell (“the Federal Defendants”) removed the action to this Court on February 11, 2009, pursuant to 28 U.S.C. §§ 1441, 1442 and 1446. On March 23, 2009, Plaintiff purportedly filed an “Amended Complaint” in the state court suit, naming as a defendant only Nancy Werme, the Beaver County Prothonotary.¹ On April 10, 2008, the Federal Defendants filed a Motion to Dismiss. This Court ordered Plaintiff to file a response to said motion by May 15, 2009.

On June 2, 2009, Plaintiff sent an Affidavit to the Court, which has been docketed as a motion to dismiss the claims against the Federal Defendants. In his affidavit/motion, Plaintiff asserts, under penalty of perjury, that he “no longer seek[s] any action against [the Federal Defendants]” as evidenced by the filing of his “Amended Complaint” in state court, which names only Nancy Werme as a defendant. Dkt. [12], p. 4.

It appearing that the import of Plaintiff’s affidavit/motion is to cease any legal action against the Federal Defendants, it is recommended that the district court grant Plaintiff’s motion and dismiss the action as against the Federal Defendants. It is further recommended that, having dismissed all claims over which the court has original jurisdiction, the district court should decline to exercise supplemental jurisdiction over any remaining state law claims against defendant Werme and remand the action to the Court of Common Pleas for Beaver County for all future proceedings. See Bright v. Westmoreland County, 380 F.3d 729, 751 (3d Cir. 2004)

¹ The Court notes that, pursuant to federal law, following removal of an action from a state court and notice to the state court clerk (or prothonotary), the state court is divested of jurisdiction and further proceedings in the state court are precluded “unless and until the case is remanded.” 28 U.S.C. § 1446(d). Notice was provided to the state court prothonotary in this case and, hence, Plaintiff’s “Amended Complaint” is void. Dkt. [1]. See Wideman v. Citywide Banks, No. 83-3548, 2009 WL 117873, *2, n.3 (E.D. Pa. Jan. 15, 2009).

(noting that although District Court has discretion under 28 U.S.C. § 1367(c)(3) to exercise supplemental jurisdiction where no federal claim remains, it should do so only in extraordinary circumstances). No such circumstance is presented here. 1367(c)(3).

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) & (C), and Local Rule 72.1.4 B, the parties are permitted to file written objections and responses thereto in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Failure to timely file objections may constitute waiver of any appellate rights.

Respectfully submitted,

/s/ Amy Reynolds Hay

Chief United States Magistrate Judge

Dated: 12 June, 2009

cc: Hon. Arthur J. Schwab
United States District Judge

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